

INITIAL STATEMENT OF REASONS

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Article 7, Sections 8072 and 8074

Title 4, Division 11

California Code of Regulations

INTRODUCTION

The California Pollution Control Financing Authority (the “Authority”) is organized and operating pursuant to Sections 44500 through 44563 of the California Health and Safety Code (the “Act”). The Act and the current regulations of the Authority (Title 4, CCR, §§ 8070-8079, the “Capital Access Regulations”) provide for the Capital Access Loan Program for Small Businesses (the “Program”) to assist small businesses to obtain affordable financing. The Authority proposes to amend Sections 8072 and 8074 of the California Code of Regulations (the “Amended Capital Access Regulations”).

Currently, Capital Access Regulations unnecessarily penalize participating financial institutions if they do not notify the Authority within specific time deadlines: (1) for enrolling new loans into the Program, and (2) after extending or renewing existing CalCAP loans. The Amended Capital Access Regulations revise the regulations to:

- Ease the time-frame requirement for participating financial institutions to enroll new CalCAP loans into the Program;
- Remove the requirement that the Authority terminate a loan from the Program if the financial institution fails to provide notification to the Authority within 60 days that it had extended or renewed a loan; and
- Require the financial institutions to provide certification of a loan’s enrollment status in CalCAP at the time a claim for reimbursement on a charged-off loan is submitted to the Authority.

SECTION-BY-SECTION ANALYSIS

SECTION 8072(b)(1). LOAN ENROLLMENT.

1. Public Problem, Administrative Requirement or Other Condition or Circumstance that the Regulation is Intended to Address.

Currently, Capital Access Regulations require a participating financial institution to notify the Authority in writing within ten (10) days after the date the loan is made. The date the loan is made is defined as the earlier of either: (a) the date on which the financial institution first disbursed proceeds to the borrower, or (b) the date on which the loan documents were executed and the financial institution obligated itself to disburse proceeds of the loan.

The earlier of the two dates would typically be the date loan documents are executed and the financial institution obligates itself to disburse proceeds of a loan. Notifying the Authority within 10 days from that date imposes a hardship on the participating financial institutions. A couple of examples of how this time-requirement is impacting the participating financial institutions include:

- After the loan documents are executed, the financial institution requires further documentation from the borrower prior to any release of loan funds to the borrower. Due to the borrower's delay or to further questions that arise from the provided documentation, the financial institution may not be able to enroll the loan into the Program until after the 10 days have already passed.
- After the loan documents are executed and prior to enrolling the loan with the Authority, the financial institution must deposit the borrower and lender's CalCAP loss reserve fees. When there is a delay in depositing the loss reserve fees, the financial institution may not be able to enroll the loan into the Program until after the 10 days have already passed.

2. Specific Purpose of the Regulation.

Revise Section 8072(b)(1) to define the date the loan is made as the date the financial institution first disburses proceeds of the loan to the borrower.

3. Necessity.

The change to Section 8072(b)(1) eases an administrative burden to the financial institutions by allowing them to complete their underwriting requirements without unnecessarily constraining them to meet a tight timeframe of enrolling the loan with the Authority.

4. Technical, Theoretical and/or Empirical Studies, Reports or Documents.

The Authority did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing the adoption of this amended regulation.

5. Alternatives to the Regulation Considered by the Agency and the Agency's Reasons for Rejecting Those Alternatives.

No other alternatives were presented to or considered by the Authority.

6. Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Impact on Small Business.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would lessen any adverse impact on small businesses.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business.

There will be no adverse economic impact on any California businesses.

SECTION 8072(g). LOAN ENROLLMENT.

1. Public Problem, Administrative Requirement or Other Condition or Circumstance that the Regulation is Intended to Address.

Capital Access Regulations require a participating financial institution to notify the Authority of any loan extension or renewal within 60 days of the extension or renewal. Failure to notify the Authority within 60 days results in termination of the loan from the Program.

As financial institutions are subject to personnel turnover, mergers and acquisitions, situations have resulted in loans being extended by a financial institution with the 60-day Authority notification period inadvertently lapsing.

Since the 60-day notification requirement applies only to loan extensions and renewals that do not increase the loan amount, there is no monetary impact to the Program loss reserve account. Notifying the Authority of loan extensions and renewals is a regulatory formality that does not affect other aspects of the Program.

2. Specific Purpose of the Regulation.

Revise Section 8072(g) by deleting the language that automatically terminates a loan from the Program if the Authority is not notified within 60 days of extension or renewal.

3. Necessity.

The change to Section 8072(g) eliminates an unnecessary penalty to the financial institutions and is consistent with the goals of the Program, i.e., assisting the financial institutions in making loans to small businesses in California.

4. Technical, Theoretical and/or Empirical Studies, Reports or Documents.

The Authority did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing the adoption of this amended regulation.

5. Alternatives to the Regulation Considered by the Agency and the Agency's Reasons for Rejecting Those Alternatives.

No other alternatives were presented to or considered by the Authority.

6. Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Impact on Small Business.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would lessen any adverse impact on small businesses.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business.

There will be no adverse economic impact on any California businesses.

SECTION 8074(d). CLAIM FOR REIMBURSEMENT.

1. Public Problem, Administrative Requirement or Other Condition or Circumstance that the Regulation is Intended to Address.

At the time a financial institution submits a Claim for Reimbursement on a charged-off loan that is enrolled in the Program, the Authority verifies the loan's enrollment status prior to payment on the claim. Currently, if the financial institution fails to meet a 60-day renewal or extension notification deadline to the Authority, the loan is no longer in the Program and the Claim for Reimbursement cannot be honored. As stated above under Section 8072(g), the Amended Capital Access Regulations will no longer have the requirement to terminate loans that fail to meet the 60-day renewal or extension notification deadline to the Authority. The Authority proposes to add a specific step to the claim process to compensate for the adjustment to the procedures made in notification of loan extensions made in Section 8072(g).

2. Specific Purpose of the Regulation.

The amendment to this regulation will require the financial institutions to provide certification of a loan's enrollment status in the Program at the time a Claim for Reimbursement is submitted to the Authority.

3. Necessity.

The change to Section 8074(d) is necessary to address any circumstances by which a financial institution fails to meet the 60-day renewal or extension notification requirement.

4. Technical, Theoretical and/or Empirical Studies, Reports or Documents.

The Authority did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing the adoption of this amended regulation.

5. Alternatives to the Regulation Considered by the Agency and the Agency's Reasons for Rejecting Those Alternatives.

No other alternatives were presented to or considered by the Authority.

6. Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Impact on Small Business.

The Authority has not identified any alternatives nor have any alternatives otherwise been identified and brought to the attention of the Authority that would lessen any adverse impact on small businesses.

7. Evidence Supporting Finding of No Significant Adverse Economic Impact on any Business.

There will be no adverse economic impact on any California businesses.